

Senate Bill No. 245

CHAPTER 20

An act to amend Sections 60604, 60640, 60641, and 60643 of the Education Code, relating to pupil testing, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor June 15, 2001. Filed with
Secretary of State June 15, 2001.]

LEGISLATIVE COUNSEL'S DIGEST

SB 245, O'Connell. Pupil testing.

(1) Under existing law, the Leroy Greene California Assessment of Academic Achievement Act requires the Superintendent of Public Instruction to design and implement, a statewide pupil assessment program. Existing law requires the results of the achievement test administered pursuant to the Standardized Testing and Reporting Program to be returned to the school district in the same academic year in which the test was administered and no later than July 30 of the calendar year in which the test was administered.

This bill would, instead, require those test results to be returned to the district within the period of time specified by the State Board of Education.

(2) Under existing law, the Standardized Testing and Reporting Program requires each school district, charter school, and county office of education to administer to each of its pupils in grades 2 to 11, inclusive, an achievement test and a standards-based achievement test. Existing law requires the publisher of the tests and the school district to provide two makeup days for the testing of previously absent pupils no later than June 25. Existing law requires the publisher of the achievement test and standards-based test to make the individual pupil, grade, school, school district, and state results available to the State Board of Education by August 8 of each year when the achievement test is administered and available on the Internet by August 15 of that year.

This bill would instead require the publisher and the district to provide the makeup tests for absent pupils within the testing period established by the board. The bill would also require the publisher to make the test results available to the department by August 8 and the department to make results available on the Internet by August 15 only for those schools for which the last day of test administration, including makeup dates, is on or before June 25.

(3) This bill would declare that it is to take effect immediately as an urgency statute.

The people of the State of California do enact as follows:

SECTION 1. Section 60604 of the Education Code is amended to read:

60604. (a) The Superintendent of Public Instruction shall design and implement, consistent with the timetable and plan required pursuant to subdivision (b), a statewide pupil assessment program consistent with the testing requirements of this article in accordance with the objectives set forth in Section 60602. That program shall include all of the following:

(1) A plan for producing valid, reliable, and comparable individual pupil scores in grades 2 to 11, inclusive, and a comprehensive analysis of these scores based on the results of the achievement test designated by the State Board of Education that assesses a broad range of basic academic skills pursuant to the Standardized Testing and Reporting (STAR) Program established by Article 4 (commencing with Section 60640).

(2) A method of working with publishers to ensure valid, reliable, and comparable individual, grade-level, school-level, district-level, county-level, and statewide scores in grades 2 to 11, inclusive, that is based on the achievement test designated pursuant to subdivision (b) of Section 60605.

(3) Statewide academically rigorous content and performance standards that reflect the knowledge and skills that pupils will need in order to succeed in the information-based, global economy of the 21st century. These skills shall not include personal behavioral standards or skills, including, but not limited to, honesty, sociability, ethics, or self-esteem.

(4) A statewide system that provides the results of testing in a manner that reflects the degree to which pupils are achieving the academically rigorous content and performance standards adopted by the State Board of Education.

(5) The alignment of assessment with the statewide academically rigorous content and performance standards adopted by the State Board of Education.

(6) The active, ongoing involvement of parents, classroom teachers, administrators, other educators, governing board members of school districts, and the public in all phases of the design and implementation of the statewide pupil assessment program.



(7) The development of a contract or contracts with a publisher or publishers, after the approval of statewide academically rigorous content standards by the State Board of Education, for the development of performance standards and assessments of applied academic skills designed to test pupils' knowledge of academic skills and abilities to apply that knowledge and those skills in order to solve problems and communicate.

(b) The superintendent shall develop and annually update for the Legislature a five-year cost projection, implementation plan, and timetable for implementing the program described in subdivision (a). The annual update shall be submitted on or before March 1 of each year to the chairperson of the fiscal subcommittee considering budget appropriations in each house. The update shall explain any significant variations from the five-year cost projection for the current year budget and the proposed budget.

(c) The Superintendent of Public Instruction shall provide each school district with guidelines for professional development that are designed to assist classroom teachers to use the results of the assessments administered pursuant to this chapter to modify instruction for the purpose of improving pupil learning. These guidelines shall be developed in consultation with classroom teachers and approved by the State Board of Education before dissemination.

(d) The Superintendent of Public Instruction and the State Board of Education shall consider comments and recommendations from school districts and the public in the development, adoption, and approval of assessment instruments.

(e) The results of the achievement test administered pursuant to Article 4 (commencing with Section 60640) shall be returned to the school district within the period of time specified by the State Board of Education.

SEC. 2. Section 60640 of the Education Code is amended to read:

60640. (a) There is hereby established the Standardized Testing and Reporting Program, to be known as the STAR Program.

(b) Commencing in the 1997–98 fiscal year and each fiscal year thereafter, and from the funds available for that purpose, each school district, charter school, and county office of education shall administer to each of its pupils in grades 2 to 11, inclusive, the achievement test designated by the State Board of Education pursuant to Section 60642 and the standards-based achievement test provided for in Section 60642.5. The State Board of Education shall establish a testing period to provide that all schools administer these tests to pupils at approximately the same time during the instructional year, except as necessary to ensure test security and to meet the final filing date.



(c) The publisher and the school district shall provide two makeup days for the testing of previously absent pupils within the testing period established by the State Board of Education in subdivision (b).

(d) The governing board of the school district may administer achievement tests in kindergarten and grade 1 or 12, or both, as it deems appropriate.

(e) Individuals with exceptional needs who have an explicit provision in their individualized education program that exempts them from the testing requirement of subdivision (b) shall be so exempt.

(f) At the school district's option, pupils of limited English proficiency who are enrolled in any of grades 2 to 11, inclusive, may take a second achievement test in their primary language. Primary language tests administered pursuant to this subdivision and subdivision (g) shall be subject to the requirements of subdivision (a) of Section 60641. These primary language tests shall produce individual pupil scores that are valid and reliable. Notwithstanding any other provision of law, the State Board of Education shall designate for use, as part of this program, a single primary language test in each language for which such a test is available for grades 2 to 11, inclusive, no later than November 14, 1998, pursuant to the process used for designation of the assessment chosen in the 1997–98 fiscal year, as specified in Sections 60642 and 60643, as applicable.

(g) Pupils of limited English proficiency who are enrolled in any of grades 2 to 11, inclusive, shall be required to take a test in their primary language if such a test is available, if fewer than 12 months have elapsed after their initial enrollment in any public school in the state.

(h) (1) The Superintendent of Public Instruction shall apportion funds to school districts to enable school districts to meet the requirements of subdivisions (b), (f), and (g).

(2) The State Board of Education shall annually establish the amount of funding to be apportioned to school districts for each test administered and shall annually establish the amount that each publisher shall be paid for each test administered under the agreements required pursuant to Section 60643. The amounts to be paid to the publishers shall be determined by considering the cost estimates submitted by each publisher each September and the amount included in the Budget Act and by making allowance for the estimated costs to school districts for compliance with the requirements of subdivisions (b), (f), and (g).

(3) An adjustment to the amount of funding to be apportioned per test may not be valid without the approval of the Director of Finance. A request for approval of an adjustment to the amount of funding to be apportioned per test shall be submitted in writing to the Director of Finance and the chairpersons of the fiscal committees of both houses of



the Legislature with accompanying material justifying the proposed adjustment. The Director of Finance is authorized to approve only those adjustments related to activities required by statute. The Director of Finance shall approve or disapprove the amount within 30 days of receipt of the request and shall notify the chairpersons of the fiscal committees of both houses of the Legislature of the decision.

(i) For the purposes of making the computations required by Section 8 of Article XVI of the California Constitution, the appropriation for the apportionments made pursuant to paragraph (1) of subdivision (h), and the payments made to the publishers under the contracts required pursuant to Section 60643 or subparagraph (C) of paragraph (1) of subdivision (a) of Section 60605 between the State Department of Education and the contractor, shall be deemed to be “General Fund revenues appropriated for school districts,” as defined in subdivision (c) of Section 41202 of the Education Code, for the applicable fiscal year, and included within the “total allocations to school districts and community college districts from General Fund proceeds of taxes appropriated pursuant to Article XIII B,” as defined in subdivision (e) of Section 41202 of the Education Code, for that fiscal year.

(j) As a condition to receiving an apportionment pursuant to subdivision (h), a school district shall report to the superintendent all of the following:

(1) The number of pupils enrolled in the school district in grades 2 to 11, inclusive.

(2) The number of pupils to whom an achievement test was administered in grades 2 to 11, inclusive, in the school district.

(3) The number of pupils in paragraph (1) who were exempted from the test pursuant to subdivision (e) of Section 60640.

(4) The number of pupils in paragraph (1) who were exempted from the test at the request of their parents or guardians.

SEC. 3. Section 60641 of the Education Code is amended to read:

60641. (a) The State Department of Education shall ensure that school districts comply with each of the following requirements:

(1) The achievement test designated pursuant to Section 60642 and the standards-based achievement test provided for in Section 60642.5 are scheduled to be administered to all pupils during the period prescribed in subdivision (b) of Section 60640.

(2) The individual results of each pupil test administered pursuant to Section 60640 shall be reported, in writing, to the pupil’s parent or guardian. The written report shall include a clear explanation of the purpose of the test, the pupil’s score, and its intended use by the school district. Nothing in this subdivision shall be construed to require teachers to prepare individualized explanations of each pupil’s test score.



(3) The individual results of each pupil test administered pursuant to Section 60640 shall also be reported to the pupil's school and teachers. The school district shall include the pupil's test results in his or her pupil records. However, except as provided in this section, individual pupil test results may only be released with the permission of the pupil's parent or guardian.

(4) The districtwide, school-level, and grade-level results of the STAR Program in each of the grades designated pursuant to Section 60640, but not the score or relative position of any individually ascertainable pupil, shall be reported to the governing board of the school district at a regularly scheduled meeting, and the countywide, school-level, and grade-level results for classes and programs under the jurisdiction of the county office of education shall be similarly reported to the county board of education at a regularly scheduled meeting. These results shall be reported at the same meeting at which the results of the assessments of applied academic skills are reported pursuant to Section 60609, when those assessments are implemented.

(b) The publisher designated pursuant to Section 60642 and the publisher of the standards-based achievement tests provided for in Section 60642.5 shall make the individual pupil, grade, school, school district, and state results available to the State Department of Education pursuant to paragraph (9) of subdivision (a) of Section 60643 by August 8 of each year in which the achievement test is administered for those schools for which the last day of test administration, including makeup days, is on or before June 25. The State Department of Education shall make the grade, school, school district, and state results available on the Internet by August 15 of each year in which the achievement test is administered for those schools for which the last day of test administration, including makeup days, is on or before June 25.

(c) The department shall take all reasonable steps to ensure that the results of the test for all pupils who take the test by June 25 are made available on the Internet by August 15, as set forth in subdivision (b).

SEC. 4. Section 60643 of the Education Code is amended to read:

60643. (a) To be eligible for consideration under Section 60642 or 60642.5 by the State Board of Education, test publishers shall agree in writing each year to meet the following requirements, if selected:

(1) Enter into an agreement, pursuant to subdivision (e), with the State Department of Education by November 15, for the 1999–2000 school year, or by October 15, for any school year thereafter.

(2) With respect to selection under Section 60642.5, align the standards-based achievement test provided for in Section 60642.5 to the academically rigorous content and performance standards adopted by the State Board of Education.



(3) Comply with subdivisions (c) and (d) of Section 60645.

(4) Provide valid and reliable individual pupil scores only in the content areas specified in subdivision (c) of Section 60642 to parents or guardians, teachers, and school administrators.

(5) Provide valid and reliable aggregate scores only in the content areas specified in subdivision (c) of Section 60642 to school districts and county boards of education in all of the following forms and formats:

(A) Grade level.

(B) School level.

(C) District level.

(D) Countywide.

(E) Statewide.

(F) Comparison of statewide scores relative to other states.

(6) Provide disaggregated scores, based on limited-English-proficient status and nonlimited-English-proficient status. For purposes of this section, pupils with “nonlimited-English-proficient status” shall include the total of those pupils who are English-only pupils, fluent-English-proficient pupils, and redesignated fluent-English-proficient pupils. These scores shall be provided to school districts and county boards of education in the same form and formats listed in paragraph (5).

(7) Provide disaggregated scores by pupil gender and provide disaggregated scores based on whether pupils are economically disadvantaged or not. These disaggregated scores shall be in the same form and formats as listed in paragraph (5). In any one year, the disaggregation shall entail information already being collected by school districts, county offices of education, or charter schools.

(8) Provide disaggregated scores for pupils who have individualized education programs and have enrolled in special education, to the extent required by federal law. These scores shall be provided in the same forms and formats listed in paragraph (5). This section may not be construed to exclude the scores of special education pupils from any state or federal accountability system.

(9) Provide information listed in paragraphs (5), (6), (7), and (8) to the State Board of Education and the State Department of Education in the medium requested by each entity, respectively.

(b) It is the intent of the Legislature that the publisher work with the Superintendent of Public Instruction and the State Board of Education in developing a methodology to disaggregate statewide scores as required in paragraphs (6) and (7) of subdivision (a), and in determining which variable indicated on the STAR testing document shall serve as a proxy for “economically disadvantaged” status pursuant to paragraph (7).



(c) Access to any information about individual pupils or their families shall be granted to the publisher only for purposes of correctly associating test results with the pupils who produced those results or for reporting and disaggregating test results as required by this section. School districts are prohibited from excluding a pupil from the test if a parent or parents decline to disclose income. Nothing in this chapter shall be construed to abridge or deny rights to confidentiality contained in the Family Educational Rights and Privacy Act of 1974 (20 U.S.C. Sec. 1232g) or other applicable provisions of state and federal law that protect the confidentiality of information collected by educational institutions.

(d) Notwithstanding any other provision of law, the publisher of the achievement test designated pursuant to Section 60642 and the publisher of the standards-based achievement test provided for in Section 60642.5 shall comply with all of the conditions and requirements enumerated in subdivision (a) to the satisfaction of the State Board of Education.

(e) (1) Commencing January 1, 2000, a publisher may not provide a test described in Section 60642 or 60642.5 or in subdivision (f) of Section 60640 for use in California public schools unless the publisher enters into a written contract with the State Department of Education as set forth in this subdivision.

(2) The State Department of Education shall develop, and the State Board of Education shall approve, a contract to be entered into with a publisher pursuant to paragraph (1). The department may develop the contract through negotiations with the publisher.

(3) For purposes of the contract authorized pursuant to this subdivision, the State Department of Education is exempt from the requirements of Part 2 (commencing with Section 10100) of Division 2 of the Public Contract Code and from the requirements of Article 6 (commencing with Section 999) of Chapter 6 of Division 4 of the Military and Veterans Code.

(4) The contract shall include provisions for progress payments to the publisher for work performed or costs incurred in the performance of the contract. Not less than 10 percent of the amount budgeted for each separate and distinct component task provided for in each contract shall be withheld pending final completion of all component tasks by that publisher. The total amount withheld pending final completion shall not exceed 10 percent of the total contract price.

(5) The contract shall require liquidated damages to be paid by the publisher in the amount of up to 10 percent of the total cost of any component task that the publisher through its own fault or that of its subcontractors fails to substantially perform by the date specified in the agreement.



(6) The contract shall establish the process and criteria by which the successful completion of each component task shall be recommended by the State Department of Education and approved by the State Board of Education.

(7) The publishers shall submit, as part of the contract negotiation process, a proposed budget and invoice schedule, that includes a detailed listing of the costs for each component task and the expected date of the invoice for each completed component task.

(8) The costs associated with item development shall be provided as a separate amount and shall not be amortized across the number of tests to be administered.

(9) The contract shall specify the following component tasks that are separate and distinct:

(A) Development of new tests or test items as required by paragraph (2) of subdivision (a).

(B) Test materials production or publication.

(C) Delivery of test materials to school districts.

(D) Test processing, scoring, and analyses.

(E) Reporting of test results to the school districts, including, but not limited to, all reports specified in this section.

(F) Reporting of test results to the State Department of Education, including, but not limited to, the electronic files required pursuant to this section.

(G) All other analyses or reports required by the Superintendent of Public Instruction to meet the requirements of state and federal law and set forth in the agreement.

(10) The contract shall specify the specific reports and data files that are to be provided to school districts by the publisher and the number of copies of each report or file to be provided.

(11) The contract shall specify the means by which the delivery date for materials to each school district shall be verified by the publisher and the school district.

(12) School districts may negotiate a separate agreement with the publisher for any additional materials or services not within the contract specified in this subdivision, including, but not limited to, the administration of the tests to pupils in grade levels other than grades 2 to 11, inclusive. Any separate agreement is not within the scope of the contract specified in this subdivision.

SEC. 5. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:



In order to help ensure that the achievement tests administered under the STAR Program and the results of those tests are based on accurate data and provided on a reasonable timetable, thereby increasing the accuracy of the results which may affect the types of funding received by schools and the level of education received by pupils, it is necessary this act take effect immediately.

